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6 Trial Counsel for Plaintiff

7 **IN THE UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF ARIZONA**

9 Loren Sheldon  
10 282 W. Oak St.  
11 Huachuca City, Arizona 85616,

12 Plaintiff

13 -VS-

14 Special Agent Kenneth P. Fletcher  
15 Homeland Security Investigative Agent  
16 United States  
17 Department of Homeland Security  
18 4041 North Central Avenue, Suite 1650  
19 Phoenix, Arizona 85012

Civil Action No. 4:19-CV-00417-JAS

**FIRST AMENDED COMPLAINT**

20 and

21 Jody L. Napolitano  
22 Special Agent  
23 United States Department of Justice  
24 Drug Enforcement Administration  
25 3010 N. 2<sup>nd</sup> Street, Ste. 100  
26 Phoenix, Arizona 85012

Jury Demand Endorsed Hereon

27 and

28 Michael Aponte  
Special Agent  
United States Department of Justice  
Drug Enforcement Administration

Hon. James A. Soto

1 3010 N. 2<sup>nd</sup> Street, Ste. 100  
2 Phoenix, Arizona 85012

3 and

4 Michael R. Man  
5 Special Agent  
6 United States Department of Justice  
7 Drug Enforcement Administration  
8 3010 N. 2<sup>nd</sup> Street, Ste. 100  
9 Phoenix, Arizona 85012

10 and

11 Lori Tomes  
12 Special Agent  
13 United States Department of Justice  
14 Drug Enforcement Administration  
15 3010 N. 2<sup>nd</sup> Street, Ste. 100  
16 Phoenix, Arizona 85012

17 and

18 Curt Wilkins  
19 Detective  
20 Cochise County Sheriff  
21 205 North Judd Drive  
22 Mile Post 345, Highway 80  
23 Bisbee, AZ 85603

24 and

25 Roger H. Contreras  
26 Former Cochise County Deputy Attorney  
27 500 E Fry Blvd. Haymore Plaza, Suite L-16  
28 Sierra Vista, Arizona 85635

Defendants.

**FIRST AMENDED COMPLAINT**

**I. INTRODCUTION, PARTIES & JURISDICTION**

1. At all times pertinent hereto Plaintiff Loren Sheldon was a resident of Cochise County, Arizona, where he operated a company named L Sheldon & Company, Inc.;

2. At all times pertinent hereto, the named Defendants, except Contreras, were law enforcement officers employed by the agencies identified in the caption. All were working as part of a “Task Force” under the Border Alliance Group of law enforcement and drug interdiction agencies of the federal and local governments. Contreras was employed as a Cochise County Deputy Attorney;

3. These Defendants are sued in their individual capacities;

4. The actions of the Defendants, as set forth herein, were undertaken with the knowledge that they were acting in violation of Plaintiff’s rights under the Constitution of the United States;

5. This action is brought under 42 U.S.C. §1983, to vindicate rights guaranteed Plaintiff under the Constitution;

6. Defendants Fletcher, Napolitano, Man, Aponte and Tomes are sued under 42 U.S.C. §1983, and, in the alternative, under the authority of *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971) to vindicate rights guaranteed Plaintiff under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States;



1 the drugs at his place of business, and then cooperating with other drug trafficking  
2 organizations [“DTO’s”] to distribute the drugs across the country;

3 14. When Fletcher was reassigned to Sierra Vista and the Border Alliance  
4 Group, he and Wilkins began to work together in investigating Plaintiff. Upon information  
5 and belief, these two engaged the Defendants Man and Aponte in this investigation, under  
6 the umbrella of the Border Alliance Group;

7 15. Fletcher and Wilkins could not have initiated, nor continued the  
8 investigation, in the absence of approval of Man and Aponte, both of whom were kept  
9 apprised of Fletcher’s and Wilkins’ actions as described herein, and approved those  
10 actions;

11 **November 25, 2008 seizure**

12 16. On November 25, 2008, V.S. was detained on I-10 westbound, driving a  
13 dump truck owned by Plaintiff’s company. The bed was loaded with numerous bales of  
14 marijuana, concealed under a load of dirt;

15 17. Defendants’ informant had alerted them to the shipment, and Defendants had  
16 alerted law enforcement to be on the lookout, and detain the vehicle. Further, the informant  
17 claimed that “drug activity” had been going on for months at a certain sand and gravel  
18 quarry, and that Plaintiff’s company trucks were being used to move marijuana to Tucson.  
19 The informant also claimed that Hispanic males were seen on the property carrying assault  
20 rifles. Defendants made no effort to corroborate this story of organized drug trafficking;

21 18. Defendant Wilkins swore out a search warrant for search for the quarry,  
22 located at Plaintiff’s business site, alleged to be the situs of the organized, ongoing drug  
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1 trafficking He alleged the informant information, and that, based on his experience and  
2 knowledge, the location was being used for large scale transshipment of marijuana. On  
3 November 25, 2008, a search was conducted. The search did not produce evidence that  
4 Plaintiff had engaged in drug use or trafficking;  
5

6 19. During the search, Plaintiff interacted with the agents and provided  
7 information to them. Agents came upon one “rolloff box” that had been modified by the  
8 welding of a steel plate that created a cavity under the plate. The rolloff was owned by  
9 Plaintiff. Plaintiff informed the agents that he had previously noticed the modification, and  
10 had begun removing the plate by having the welds burned out along the sides, leaving the  
11 only connections at the corners. Plaintiff was intending to complete the removal when his  
12 business permitted. The agents seized the rolloff box, however, it was returned to Plaintiff.  
13

14 20. Plaintiff was not charged with any crime at that time. V.S. was tried for the  
15 felony distribution charge, but acquitted;  
16

17 **January 31, 2019 Seizure**  
18

19 21. Between November 25, 2018 and January 30, 2019, Defendants continued to  
20 receive information from their informant;  
21

22 22. On or before January 30, 2019, the agents were alerted by the informant that  
23 a Sheldon tractor-trailer loaded with a piece of heavy equipment, and transporting  
24 marijuana, would be travelling north from the yard the next day;  
25

26 23. Wilkins notified Border Patrol checkpoints in the area to be on the lookout  
27 for such a vehicle;  
28

1           24.    On Saturday, January 31, 2019, a Sheldon employee, Clay Aitkens, left the  
2 Sheldon property driving a tractor-trailer rig owned personally by Plaintiff, carrying a  
3 grader purportedly owned by one J.S.Jr. for delivery to a location in Benson. Plaintiff had  
4 not ordered him to move the grader, but did it on the direction of J.S.Jr.;

5  
6           25.    When Aitken came to the Border Patrol checkpoint on Highway 90, the  
7 agents recognized the vehicle as the one identified by Defendant Wilkins, stopped it, and  
8 engaged in a consent search of the vehicle, and uncovered bundles of marijuana wrapped in  
9 cellophane in the cab of the tractor;

10  
11           26.    Aitken was arrested and the vehicles seized;

12  
13           27.    On February 2, 2019, Plaintiff, having been notified that Aitken had taken  
14 his tractor-trailer without permission, filed a stolen vehicle report with the Cochise County  
15 Sheriff;

16           28.    Aitken was charged with transporting marijuana, was tried, and acquitted;

17  
18           29.    Approximately one (1) year after Aitken's acquittal, Fletcher made contact  
19 with him, and set up a meeting in which Fletcher and Napolitano were present. During that  
20 meeting, Fletcher told Aitken that he was "going to get Sheldon, take everything he has, his  
21 property, horses, vehicles and leave Sheldon broke, and put him in prison for the rest of his  
22 life;"

23  
24           30.    Plaintiff eventually recovered his tractor-trailer. He was not then charged  
25 with any crime;

**Events of 2012-2013**

31. In 2009, Defendant Napolitano was assigned to work in the Border Alliance Group with the other Defendants;

32. Between 2009 and 2012, Defendants made contact with J.S.Jr. and his brother and recruited them as informants attempting to secure evidence of Plaintiff being a drug trafficker. The S. brothers provided information along the same lines as the other informant, that Plaintiff was a drug trafficking “kingpin” responsible for vast amounts of illegal importation and distribution of marijuana;

33. None of the information given by the S. brothers produced any tangible evidence of criminal activity on Plaintiff’s part;

34. In mid-2012, Defendants recruited another informant, this one being, upon information and belief, J.J.V., a long-time employee of Plaintiff’s company. Defendants also recruited and sought information from another employee, D.J.;

35. Over the next months, the informant told Defendants stories that tracked with those Defendants had heard, but embellished on those. For example, the informant told Defendants that Plaintiff was associated with his brother, who owned an aggregates company in Marysville, Michigan, and that there were large cash exchanges between them, leading Defendants to surmise that Plaintiff was laundering money for his extensive drug trafficking operations; and that Plaintiff had tens of thousands of dollars cash in safes in his residence, even supplying the Defendants with alleged combinations to the safes and credit card account information and PIN’s . The informant claimed over the months that Plaintiff was moving marijuana in coordination with the S. brothers, and detailed how he claimed



1 this was being accomplished – marijuana being moved to the Plaintiff's business, stored,  
2 packaged and distributed from that location. The informant also claimed that Plaintiff had  
3 stolen a trailer and a truck, and claimed Plaintiff had over 150 guns, included AK-47's;  
4

5 36. The informant also gave Defendants names and information regarding  
6 individuals he claimed were associated with Plaintiff in the drug trafficking;  
7

8 37. Despite this wealth of alleged facts, Defendants were unable to secure any  
9 credible evidence that Plaintiff was engaged in any criminal activity;  
10

**February 19, 2014 Seizure**

11 38. Before February 19, 2014, Defendants' informant, J.J.V., in cooperation with  
12 other actors, was engaged in drug trafficking, using Sheldon company vehicles as a front;  
13

14 39. Before that date, J.J.V or another informant told Fletcher of a shipment of  
15 bulk marijuana to be made using a Sheldon dump truck filled with manure to a location in  
16 Tucson;  
17

18 40. J.J.V informed Plaintiff that there would be need of a load of manure and  
19 backhoe work to be done at a location near where the company was doing sewer work;  
20

21 41. J.J.V made all the arrangements, and transported a load of manure to the  
22 location on Jennifer Lane and dumped it. He then informed Plaintiff that the owner was  
23 upset because the manure was supposed to go to a location in Tucson;  
24

25 42. Plaintiff made arrangements to meet J.J.V at the location with a backhoe to  
26 reload the manure into the dump truck;  
27

28 43. Unknown to Plaintiff, while the dump truck was sitting at the Jennifer Lane  
location, associates of J.J.V and the S. brothers loaded bundles of marijuana into the bed.

1 When Plaintiff arrived at the location, he used the backhoe to reload the manure, not  
2 knowing that the marijuana was in the bed;

3 44. J.J.V told Plaintiff he could not drive the vehicle to Tucson, so Plaintiff  
4 assigned another employee, Rob Larson, to make the trip;

5 45. Once the load was secured, J.J.V or another informant informed Fletcher  
6 and Wilkins of the specifics of the shipment, and Fletcher alerted Defendant Aponte, who  
7 in turn alerted Border Patrol checkpoints;  
8

9 46. At approximately 11:40 a.m., Fletcher was notified by Aponte that the  
10 vehicle was stopped for inspection at the checkpoint on Highway 83. By the time Fletcher  
11 got on the road, Larson had passed through the checkpoint and was on I-10 westbound.  
12 Fletcher had alerted Border Patrol to shadow the vehicle and unmarked cars followed it up  
13 I-10;  
14

15 47. Fletcher made contact with the vehicle in the afternoon in a South Tucson  
16 neighborhood, and saw Larson dump the load of manure, also seeing bundles of marijuana  
17 in the load;  
18

19 48. Larson was detained, a search warrant obtained, and the dump truck  
20 searched. A large amount of marijuana was discovered. Two Mexican nationals, Rene  
21 Fimbres-Molina, and Raul Eduardo Avendano-Cota, were arrested at the location with a  
22 large amount of cash;  
23

24 49. On February 24, 2014, Plaintiff was interviewed by Napolitano and Fletcher  
25 regarding the matter. He spoke freely with them without a lawyer present over a long  
26 period of time. The interview was recorded. Fletcher did the questioning. After Plaintiff  
27  
28

1 explained his involvement, and the actions of J.J.V, Fletcher invited Plaintiff to “join Team  
2 America” because Plaintiff was the target of an investigation involving the S. brothers, and  
3 implied Plaintiff could escape the consequences of drug trafficking by giving up the S.  
4 brothers. He informed Plaintiff that he, Fletcher, had recordings of Plaintiff. He gave  
5 Plaintiff twenty-four (24) hours to come to “Team America” or he did not know what the  
6 prosecutors would do, because the investigation was closing in on Plaintiff;  
7

8  
9 50. The next day, Plaintiff met again with the agents, informed the agents that he  
10 had spoken with a lawyer, and, as he had stated the day before, could not add anything to  
11 his statement of the 24<sup>th</sup>;

12  
13 51. Larson was released by law enforcement without charge. Fimbres-Molina  
14 and Avendano-Cota were charged, tried, and convicted of drug offenses. Plaintiff was not  
15 charged with any offense, nor was J.J.V. Defendants were unable in any interviews with  
16 any individuals to get information connecting Plaintiff was drug trafficking;  
17

18 52. Fletcher at some point asked Plaintiff to contact him if the S. brothers  
19 approached Plaintiff and proposed that he engage in drug trafficking. Plaintiff agreed to  
20 contact Fletcher;  
21

22 **July, 2014**

23 53. Following the seizure, Defendants put the Jennifer Lane location under  
24 surveillance; the observed activities between that address and 2314 Mustang Heights Road,  
25 Whetstone, Arizona;  
26

27 54. On July 11, 2014, agents witnessed what appeared to be individuals loading  
28 marijuana at a residence located at 2314 Mustang Heights Road, Whetstone, Arizona.

1 Subsequently, a traffic stop was initiated, and law enforcement apprehended two  
2 individuals, H.M.S. and one G.C., and seized over one thousand pounds of marijuana in the  
3 vehicle;

4  
5 55. Following that, a raid was conducted on the residence, and two others  
6 arrested and a large amount of marijuana seized;

7  
8 56. Following that, additional individuals connected to the traffickers arrested  
9 were also seized. From those individuals, Defendant learned of numerous individuals  
10 involved in the bulk illegal importation and distribution of marijuana;

11  
12 57. The investigation and prosecution of those individuals, which included  
13 information from a confidential informant, did not come up with any evidence connecting  
14 Plaintiff with any criminal activities;

15 **Spring, 2015**

16  
17 58. Defendants continued to attempt to connect Plaintiff with drug trafficking;

18  
19 59. On June 23, 2015, Napolitano and Fletcher questioned H.M.S.. Although  
20 H.M.S. did not give any information connecting Plaintiff with drug trafficking, Defendants  
21 associated him with the known traffickers;

22  
23 60. Defendants continued to interview individuals associated with H.M.S. and  
24 other known drug traffickers, but none would identify Plaintiff. As the year progressed, the  
25 law enforcement Defendants became more and more frustrated that they could not find any  
26 evidence that would convict Plaintiff of drug trafficking;  
27  
28

1           61.     Around that time the S. brothers contacted Plaintiff regarding the delivery of  
2 hay. After Plaintiff ended the call, he called Fletcher to alert him to the approach, but  
3 Fletcher discouraged Plaintiff from reaching out to him;  
4

5           **The arrest of Plaintiff**

6           62.     By August 2015, Fletcher, in consideration of giving the S. brothers a get-  
7 out-of-jail free card, recruited them to make contact with Plaintiff to induce him to engage  
8 in drug trafficking. The law enforcement Defendants, unable to secure any evidence  
9 through all the informants and interviews with known drug traffickers, decided to entrap  
10 Plaintiff into engaging in trafficking;  
11

12           63.     Over a period of weeks from August 25, 2015, through mid-September 2015,  
13 the S. brothers made a number of recorded phone calls to Plaintiff, and to J.J.V. There was  
14 one meeting on August 28, 2015 between Plaintiff, the S. brothers and J.J.V;  
15

16           64.     On September 24, 2015, Plaintiff delivered a dump truck to a location for the  
17 S. brothers to collect. Plaintiff understood that the S. brothers were digging a cattle tank in  
18 the Sonoita area, and they needed a dump truck and location to dump the fill dirt. He  
19 agreed to rent the dump truck for \$4,500 per month, and identified a dug out area on his  
20 business property that needed fill dirt for them to dump the loads.  
21

22           65.     Upon delivery of the tractor to the location, Plaintiff was detained, and  
23 arrested by Defendants;  
24

25           66.     On that same day, Defendants Fletcher and Napolitano appeared before a  
26 Cochise County Superior Court Judge and filed a sworn application for a Search Warrant  
27  
28

1 for Plaintiff's business and property. A true copy of the Application is appended hereto as  
2 Appendix A;

3 67. Although Defendants' lacked any evidence to support the following  
4 allegations, they made them as established fact in the first paragraph:  
5

6 a. In 2012, Defendants began investigating Plaintiff and that "SHELDON  
7 utilizes his company's tractor trailers from L. Sheldon & Co. Inc., to transport hundred  
8 pound quantities of marijuana from Sierra Vista....;"  
9

10 b. "Agents have identified SHELDON as a mid-level coordinator within the  
11 DTO [Drug Trafficking Organization]. This DTO is based in Mexico with mid and high  
12 level distributors operating in Sierra Vista, Huachuca City, and Tucson, Arizona as well as  
13 close ties to Michigan....;"  
14

15 68. The entirety of the second paragraph of the Application was false, in that  
16 Plaintiff never stored marijuana at his business or in a "trap" of a vehicle, nor did  
17 Defendants have any evidence that the invoicing that was done for deliveries was used to  
18 "evade any ties" with drug traffickers. It was also a fact that Defendants had no evidence  
19 that Plaintiff had been transporting marijuana for over ten (10) years;  
20

21 69. Paragraph 3 claimed the Defendants had obtained the information contained  
22 in the Application in July 2012, from a "reliable source." That was false;  
23

24 70. In Paragraph 6, Defendants identified the search conducted on Plaintiff's  
25 business in November 2008. They claimed that "underground conex boxes" had been  
26 discovered on the property; that was false. Plaintiff had previously partially buried two  
27 garbage truck containers for use as fallout shelters and also as a place for local gun club to  
28

1 hold training and live firings. Defendants knew this, but intentionally omitted the  
2 information from the Application, and substituted their “experience” that the “conex  
3 boxes” were used to store marijuana. Further, Defendants swore that they had discovered a  
4 “large trash bend (sic) equipped with a false bottom.” Defendants omitted the material  
5 information that the “false bottom” was of such a configuration that it could not have  
6 accommodated a single bulk package of marijuana, and had been rendered useless by being  
7 cut through, and that Plaintiff informed the agents of that at the time. Defendants omitted  
8 the salient fact that despite searching and seizing a load of personal property, including  
9 computers and other records, they had been unable to find any evidence of criminal  
10 activity;  
11

12  
13  
14 71. Paragraphs 9 through 18 recounted claims of facts regarding the calls placed  
15 by the S. brothers to Plaintiff and J.J.V, and recordings of meetings held by the S. brothers  
16 with Plaintiff and J.J.V. Defendants peppered the Application with false claims, such as  
17 that Plaintiff and the informants would discuss the transportation and storage of  
18 “marijuana;”  
19

20 72. Defendants swore that, in one of the recording conversations, Plaintiff  
21 informed the informants that as to the February 19, 2014 seizure, he had “fabricated a story  
22 [to the agents] which dissociated himself from the marijuana seizure....” This was entirely  
23 false;  
24

25 73. In Paragraph 15, Defendants claimed that on September 19, 2015, when  
26 Plaintiff addressed renting his shop to the S. brothers, this was code for the illegal drug  
27 activity. This statement was false. Likewise, in Paragraph 17, when addressing the  
28

1 agreement drafted by Plaintiff for the services for a monthly fee of \$4,500 [an entirely  
2 reasonable fee for the services and rental], Defendants swore, without any evidence, that  
3 this was another instance of Plaintiff's clever disinformation campaign of "disconnecting"  
4 himself from the illegal activity. This was false. Defendants had no evidence that Plaintiff  
5 had created false rental receipts or invoices in the past;  
6

7         74. Defendants concluded the Application with the claim that Plaintiff had  
8 agreed to accept \$40,000.00 to deliver 1,000 pounds of marijuana at the direction of the S.  
9 brothers. They did not inform the Judge, however, that there was no 1,000 pounds of  
10 marijuana at Plaintiff's place of business, nor was any delivered to his place of business  
11 before September 24, 2015, and that when Plaintiff delivered the dump truck to the S.  
12 brothers, it was empty;  
13  
14

15         75. In the Application, Defendants deeply implicated J.J.V in the "conspiracy;"  
16

17         76. The Judge signed the proffered Search Warrant 201500032, authorizing  
18 searches at both the business and residence;  
19

20         77. On September 24 and 25, 2015, Border Alliance Group agents under the  
21 direction and control of the Defendants, searched both the business and home of Plaintiff.  
22 Although they seized personal property, including computers, hard drives, cell phones, and  
23 business records, they failed to locate any safes holding tens of thousands of dollars of  
24 cash, as their informants had claimed, no assault rifles, no 150 guns, no drugs of any kind.  
25 They failed to unearth any documents connecting Plaintiff with any of the known drug  
26 traffickers, both convicted and otherwise. In short, Plaintiff's business and home were  
27 clean;  
28



**The Indictments and prosecution**

78. Before September 2015, Defendant Tomes was assigned to the Sierra Vista office and began working with Defendants;

79. Before October 2015, Defendants attempted to secure an indictment of Plaintiff through grand juries convened by, first, the Office of the United States Attorney for Arizona; then, through the Office of the Arizona Attorney General. Both Offices declined to present evidence against Plaintiff;

80. On information and belief, before September 2012, the law enforcement Defendants approached Roger H. Contreras, Deputy Cochise County Attorney. Contreras was given a history of the operations targeting Plaintiff. Contreras agreed to work with the Defendants to accomplish the arrest and prosecution of Plaintiff for drug trafficking. Thereafter, Contreras advised the Defendants in their activities, including the drafting the search warrant application in 2015 and the plan to arrest Plaintiff after he delivered the dump truck to the Shell station. Contreras agreed to seek an indictment of Plaintiff by convening a grand jury in that County. Subsequently, he was supplied by Defendants with information and worked with them to prepare for the presentation of evidence;

81. Defendants prepared Napolitano to testify, and on October 1, 2015, she did testify before the Cochise County grand jury;

82. In that testimony, Napolitano repeated the falsehoods and material omissions detailed above that were used to secure Search Warrant 201500032, and additional testimony, proffered as fact, which was not corroborated. Such evidence included, but is not limited to:

1           a.       On and before November 28, 2008, over 2,000 pounds of marijuana were  
2 loaded onto a dump truck at Plaintiff's company;

3           b.       That, in the search of the Plaintiff's business on November 28, 2008, several  
4 ledgers were found, and the appearance of illegal activity on the property;

5           c.       That the dump truck which was seized on February 19, 2009, in Tucson, had  
6 been loaded with marijuana at the Plaintiff's business;

7           d.       That the investigation had confirmed that in the 2008, 2009 and 2014  
8 seizures, Plaintiff had "put the receipt in a third party's name [so he could] distance himself  
9 from the truck if it is seized by law enforcement" and that he had confessed to their  
10 informants that that was what he had done on the three dates;

11           e.       That, in conversations with their informants, when Plaintiff used the term  
12 "dirt," he really meant marijuana;

13           f.       That after Plaintiff delivered a dump truck to a Shell gas station in Sonoita, it  
14 would be loaded with 1,000 of marijuana and returned to Plaintiff's business;

15           g.       That, Plaintiff assured the informants that the truck would be mechanically  
16 sound "so there would be no encounter with law enforcement back to Sheldon's shop....;"

17           83.      In light of the false evidence and material omissions by Napolitano, the  
18 grand jury issued an indictment of twenty (20) counts of drug trafficking against Plaintiff,  
19 including the 2008, 2009, 2014 seizures and the 2015 arrest, and also indicted J.J.V for  
20 crimes arising from the 2015 arrest. The charges were lumped together in Case.  
21 CR201500693;  
22  
23  
24  
25  
26  
27  
28

1           84. Plaintiff's counsel filed a Motion challenging the composition of the grand  
2 jury and questioning probable cause, and the trial Judge ordered that a new grand jury be  
3 convened;

4  
5           85. On January 22, 2016, Contreras convened the second grand jury, and  
6 Defendant Tomes, having been previously prepared by Defendants, testified;

7           86. Tomes repeated the falsehoods and material omissions that were detailed  
8 above, and the grand jury issued a second indictment of the identical counts against  
9 Plaintiff and J.J.V;

10  
11           87. Over the period of the next two years, the State consecutively dismissed the  
12 charges against Plaintiff for the 2008 and 2009 seizures, then the 2015 arrest, and, finally,  
13 the 2014 seizure. The first dismissal occurred on August 25, 2017;

14  
15           88. On November 22, 2017, Plaintiff filed a Petition for Clearance of Record  
16 pursuant to A.R.S. §13-4051. On October 31, 2018, that Petition was granted. The Court  
17 stated that, in hindsight [the Court's hindsight] "there was no realistic probability that the  
18 State could ever prove the charges beyond a reasonable doubt....;"

19  
20           89. Although J.J.V's involvement in the actions that lead to the seizure in 2014,  
21 and was implicated by Defendants' informants as having participated extensively in the  
22 alleged 2015 conspiracy to traffic in drugs, he was never prosecuted for any offense;

23  
24           **III. FIRST CLAIM: MALICIOUS PROSECUTION**

25           90. Plaintiff realleges Paragraphs 1 through 89 as if fully set forth herein;

26           91. Defendants prosecuted Plaintiff without probable cause, and with malice  
27 towards him;  
28

1           92. Defendants' actions, in seizing Plaintiff and his property, and in so  
2 prosecuting him, and in engaging in intimidating and oppressive surveillance of him and  
3 his business both before and during the prosecution, was intended to deprive Plaintiff of his  
4 right to liberty and to engage in his business and occupation under the First, Fourth and  
5 Fourteenth Amendments to the Constitution;  
6

7           93. Defendants succeeded in that goal in that, over the period of years the  
8 prosecution continued, Plaintiff's business was effectively destroyed;  
9

10          94. As a direct and proximate result, Plaintiff has suffered extreme emotional  
11 distress and other intangible losses, including, but not limited to the loss of his reputation  
12 and standing in the community; a permanent loss of income; has incurred costs and fees of  
13 his defense; and has suffered other damages not enumerated herein;  
14

15           **IV. SECOND CLAIM: JUDICIAL DECEPTION/FABRICATION OF**  
16           **EVIDENCE: FIFTH AND FOURTEENTH AMENDMENT**

17          95. Plaintiff realleges Paragraphs 1 through 94 as if fully set forth herein;  
18

19          96. Defendants' fabrication and material omissions of evidence, as set forth  
20 above, was done recklessly and/or intentionally;

21          97. Plaintiff would not have been arrested, his business would not have been  
22 subject to search, and he would not have been prosecuted in the absence of the fabrications  
23 and material omissions of evidence;  
24

25          98. As a direct and proximate result, Plaintiff has suffered extreme emotional  
26 distress and other intangible losses, including, but not limited to the loss of his reputation  
27  
28

1 and standing in the community; a permanent loss of income; has incurred costs and fees of  
2 his defense; and has suffered other damages not enumerated herein;

3  
4 **V. THIRD CLAIM: CONSPIRACY**

5 99. Plaintiff realleges Paragraphs 1 through 98 as if fully set forth herein;

6 100. This Claim is brought pursuant to Section 1983;

7 101. Defendants' course of conduct in 2015, as set forth herein, was as a result of  
8 an agreement among and between them to violate Plaintiff's constitutional protections  
9 against denial of due process and denial of liberty;  
10

11 102. As a direct and proximate result, Plaintiff has suffered extreme emotional  
12 distress and other intangible losses, including, but not limited to the loss of his reputation  
13 and standing in the community; a permanent loss of income; has incurred costs and fees of  
14 his defense; and has suffered other damages not enumerated herein;  
15

16 WHEREFORE Plaintiff demands judgment, jointly and severally, against each  
17 Defendant, as follows:  
18

19 1. Under the First, Second and Third Claims, damages in the amount of five  
20 million, one hundred and fifty thousand dollars (\$5,150,000.00);  
21

22 2. Under the First, Second and Third Claims, punitive damages in such amounts  
23 as the jury deems just;

24 3. Interest, costs and an award of reasonable attorney fees pursuant to 42 U.S.C.  
25 §1988;  
26

27 4. Such other relief as the Court deems just.  
28

Respectfully submitted,

/s/ Michael Garth Moore

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Trial Counsel for Plaintiff

Jury Demand Endorsed Hereon